IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

BENJAMIN ELLEGOOD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 01-213-SLR
	)	
STANLEY TAYLOR, ROBERT SNYDER, DAVID HOLMAN and JANICE HENRY,	)	
	)	
Defendants.	)	

Benjamin Ellegood, Wilmington, Delaware. Plaintiff, pro se.

Gregory E. Smith, Deputy Attorney General, State of Delaware Department of Justice, Wilmington, Delaware. Counsel for Defendants.

MEMORANDUM OPINION

Dated: January 14, 2003
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On April 4, 2001, plaintiff Benjamin Ellegood filed this action against defendants Stanley Taylor, Robert Snyder, David Holman and Janice Henry alleging civil rights violations under 42 U.S.C. § 1983 in that inadequate medical care and the denial of recreation violated his Eighth and Fourteenth Amendment rights. (D.I. 2) Plaintiff subsequently amended his complaint, alleging that a denial of access to the courts violated his Fourteenth Amendment right to Due Process. (D.I. 3)

Defendants moved to dismiss the complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 10) Subsequently, plaintiff moved for appointment of counsel. (D.I. 12) On October 10, 2001, the court denied plaintiff's motion for appointment of counsel and extended the time for him to answer defendants' motion to dismiss. (D.I. 16) On March 18, 2002, the court issued a Memorandum Opinion dismissing plaintiff's claims except his denial of recreation claim with respect to all defendants except David Holman. (D.I. 19) Defendant then moved for summary judgment. (D.I. 24)

Presently before the court is defendant's motion for summary judgment and a number of subsequent filings by plaintiff including a motion to amend his complaint (D.I. 32), a second motion to amend and add defendants (D.I. 38), a second motion for

appointment of counsel (D.I. 39), a motion for judgment on the pleadings (D.I. 45), a motion for summary judgment (D.I. 46), a motion for a temporary restraining order (D.I. 48), a motion for declaratory judgment (D.I 54), a motion for an injunction and affidavit (D.I. 57), a second motion for a temporary restraining order and preliminary injunction (D.I. 60), and a motion for discovery (D.I. 64).

II. BACKGROUND

At the time of filing the initial action, plaintiff was a pre-trial detainee[1] within the Delaware Department of Correction, being held at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. (D.I. 11 at ¶ 1) Plaintiff has a myriad of health concerns and was housed permanently in the infirmary. (D.I. 2 at 3) He is a diabetic, needing insulin twice a day. (Id.) Plaintiff is also in need of a prosthesis for his left leg. (Id.) Plaintiff alleges that, before entering the prison system, he was under the care of Dr. D. Singson at Gilpin Medical Center for his diabetic condition and had physical therapy three times a

[1]The relevant constitutional provision is not the Eighth Amendment but the Due Process Clause of the Fourteenth Amendment. "[T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law." Ingraham v. Wright, 430 U.S. 651, 671 n.40 (1977). Case law has established, however, that pre-trial detainees are afforded essentially the same level of protection under the Fourteenth Amendment; therefore, an Eighth Amendment analysis is still appropriate. See, e.g., City of Revere v. Mass. Gen. Hosp., 436 U.S. 239 (1983).

week. (Id.) Upon being incarcerated on December 8, 2000, plaintiff contends that the "prison [was] not addressing therapy or pain medication that [he] was getting in [the] street under [D]octor D. Singson." (Id.) Plaintiff states that all he does is "eat and sleep" and is suffering pain. Plaintiff further alleges that he has been denied outdoor recreation time by defendant Holman. (Id. at letter to Stanley Taylor, Jan. 16, 2001)

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted).

If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

A. Plaintiff's Denial of Recreation Claim

Because plaintiff was a pre-trial detainee at the time his claims arose, they are governed by the Due Process guarantees of

the Fourteenth Amendment. See Thompson v. County of Medina, 29 F.3d 238, 242 (6th Cir. 1994). Due process requires that a "detainee may not be punished prior to an adjudication of guilt." Bell v. Wolfish, 441 U.S. 520, 535 (1979). The government may detain an individual; the necessary inquiry is whether the conditions and restrictions of the detention amount to punishment. Id. at 536-37. "A court must determine whether a confinement . . . restriction is punitive by weighing the evidence that it is intended to punish, purposeless, or arbitrary against the possibility that it is 'an incident of some other legitimate governmental purpose,' such as 'maintaining institutional security and preserving internal order.'" Simmons v. City of Phila., 947 F.2d 1042, 1068 (3d. Cir. 1991) (quoting Bell, 441 U.S. at 538, 546)).

The denial of exercise or recreation can result in a constitutional violation. See French v. Owens, 777 F.2d 1250, 1255 (7th Cir. 1985). See, e.g., Spain v. Procunier, 600 F.2d 189, 199 (9th Cir. 1979) (finding Eighth Amendment violation where some prisoners were completely denied exercise and remaining population was limited to less than five hours of exercise per week). However, the lack of exercise can only rise to a constitutional level "where movement is denied and muscles are allowed to atrophy, [and] the health of the individual is threatened . . . ." Id. A constitutional violation will occur

when the deprivation of exercise extends for a "prolonged period of time and the plaintiff can demonstrate a tangible physical harm which resulted from the denial of exercise." Castro v. Chesney, No. 97-4983, 1998 WL 767467, at *12 (E.D. Pa. Nov. 3, 1998). In order to demonstrate a deprivation of the constitutional right to exercise, an inmate must still meet the Eighth Amendment requirements and show deliberate indifference on the part of prison officials. See generally Farmer, 511 U.S. 825.

In his original complaint plaintiff alleged a complete denial of recreation. (D.I. 2) He stated that "[a]ll I do is eat and sleep with pain in my bed without prosthesis to wear." Accepting this statement as true for purposes of defendant's original motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court denied the motion. However, in connection with his present motion for summary judgment, defendant has submitted two affidavits and Daily Nursing Records stating that while plaintiff was denied outdoor recreation, he was provided his prosthetic as well as crutches and a wheelchair and given unfettered access to recreate and freely move about the infirmary where he was housed. (D.I. 26, 65) Furthermore, an affidavit submitted by Robert Hampton, the Director of Nursing Services at the DCC, states that

> [t]he Daily Nursing Record from the DCC infirmary demonstrates that a nurse from the day, evening, and night shifts routinely observed inmate Ellegood freely engage in exercise with the use of his crutches inside

> the infirmary.... These Daily Nursing Records further reflect that medical staff inspected the condition of inmate Ellegood's prosthetic device on at the very least a weekly basis.

(D.I. 26 at A4) Defendant also explained that it was DCC policy to limit the contact that pre-trial detainees had with sentenced inmates. Therefore, no pre-trial detainees are permitted outdoor recreation, rather, they were required to exercise inside.

Plaintiff, in his brief response, does not deny he was permitted to recreate inside the infirmary and does not appear to dispute either defendant's affidavits or records. (D.I. 35) Instead, plaintiff appears to take issue with the DCC's policy on recreation for pre-trial inmates. "It is the prison's problem if there is problem with sentenced and unsentenced inmates having [outdoor] recreation when in infirmary."

Given the evidence presented by defendant and plaintiff's inability to show a genuine issue of material fact in his response, or any of his numerous subsequent letters or motions, the court concludes that defendant has satisfied his burden of proving that no genuine issue of material fact exists. See Matsushita 475 U.S. at 586 n.10. Furthermore, when a prison policy impinges on an inmate's constitutional rights, the policy is valid if it is reasonably related to legitimate penological interests. Turner v. Safley, 482 U.S. 78, 89 (1987). Therefore, given the standards for denial of recreation as a constitutional violation discussed above, plaintiff has failed to come forward

with specific facts showing that there is a genuine issue for trial. Id. As such, summary judgment in favor of defendant is proper.

V. CONCLUSION

For the reasons stated, defendant's motion for summary judgment is granted and plaintiff's remaining motions are denied as moot. An appropriate order shall issue.

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O R D E R

At Wilmington this 14th day of January, 2003, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that

1. Defendant David Holman's motion for summary judgment (D.I. 24) is granted.

2. Plaintiff's remaining motions (D.I. 32, 38, 39, 45, 46, 48, 54, 57, 60, and 64) are denied as moot.

3. The Clerk of the Court is requested to enter judgment in favor of defendant against plaintiff.

Sue L. Robinson
United States District Judge